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13 Attorneys for Plaintiff,  
14 KENNETH J. RADER, JR.

15 SUPERIOR COURT OF CALIFORNIA  
16 COUNTY OF SAN FRANCISCO

17 KENNETH J. RADER, JR., )

18 Plaintiff, )

19 vs. )

20 SUN LIFE ASSURANCE COMPANY OF )  
21 CANADA; DAVE JONES AS )  
22 COMMISSIONER OF INSURANCE; and )  
23 DOES 1-20, inclusive, )

24 Defendants. )

Case No. CGC-13-527904

**~~(PROPOSED)~~ ORDER DENYING  
DEFENDANT SUN LIFE ASSURANCE  
COMPANY OF CANADA'S MOTION FOR  
SUMMARY JUDGMENT, OR  
ALTERNATIVELY, SUMMARY  
ADJUDICATION OF ISSUES**

Date: June 17, 2014

Time: 9:30 a.m.

Dept.: 302

Action Filed: January 10, 2013

Trial Date: July 14, 2014

25 Defendant Sun Life Assurance Company of Canada's motion for summary judgment, or  
26 alternatively, summary adjudication of issues, came on regularly before this Court on June 17, 2014.  
27 Plaintiff and Defendant were represented by their counsel of record. After consideration of the  
28 papers filed in support of and in opposition to said motion, and argument of counsel, the Court  
adopts its tentative ruling as follows:

Denied. As to the first cause of action for breach of contract, Plaintiff provides evidence  
establishing there is a triable issue of material fact as to whether Plaintiff was fully disabled prior to

ENDORSED  
FILED  
San Francisco County Superior Court

JUN 17 2014

CLERK OF THE COURT

BY: GINA GONZALES

Deputy Clerk

1 his termination on July 20, 2010. (Plaintiff's Additional Material Fact ("AMF") nos. 18-22.)  
2 Plaintiff's evidence also establishes a triable issue of material fact as to whether Plaintiff was fully  
3 disabled prior to his termination until he was hospitalized in September 2011. (Declaration of  
4 Christine Lindsey, Declaration of Michael McAllister, Declaration of Roger Bush, AMF nos. 29-38,  
5 58-70, 72-75; 77-103.) As to issue number 2, summary adjudication is denied because Defendant's  
6 construction of the policy is incorrect. It is undisputed that Plaintiff was actually terminated from  
7 employment on July 20, 2010. (Defendant's Undisputed Material Fact ("UMF") no. 14.) The Policy  
8 provides that "[a]n Employee's rights to any disability benefits are determined on the date the  
9 Employee's disability begins. The right is subject to the terms of this Policy in effect on the date  
10 disability begins and will not be affected by subsequent amendment or termination of this policy."  
11 (Leask Decl., Ex. 1., Policy, p. 55.) Instead, Defendant relies on policy language in Section V  
12 Termination Provision, para 6 (id. p. 46) regarding when an employee is "deemed terminated." (This  
13 language states that "Ceasing to be Actively At Work [a defined term] will be deemed termination of  
14 employment," with certain exceptions.) Defendant uses this inapplicable provision to import  
15 requirements into the policy that are not applicable where, as here, it is undisputed that Plaintiff was  
16 actually terminated from employment. Thus, Defendant's argument that the first cause of action for  
17 summary adjudication must be granted because the insurance policy requires Plaintiff to show he  
18 was under the continuous care of a physician in order to be eligible under the Policy, is without  
19 merit. As to the second cause of action for breach of the implied covenant of good faith and fair  
20 dealing, an insurance company "may breach the covenant when it fails to properly investigate its  
21 insured's claim." (*Egan v. Mutual of Omaha Ins. Co.* (1979) 24 Cal.3d 809, 817.) "It is essential that  
22 an insurer fully inquire into all possible bases that might support the insured's claim." (Id. at 819.)  
23 Plaintiff provides evidence that raises a triable issue of material fact as to whether Defendant  
24 inquired into all possible bases that might have supported Plaintiff's claim. (AMF 201-221, 277.)  
25 Further, the genuine dispute doctrine "does not relieve an insurer from its obligation to thoroughly  
26 and fairly investigate, process and evaluate the insured's claim." (*Wilson v. 21st Century Ins. Co.*  
27 (2007) 42 Cal.4th 713, 723.)  
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3 As to the punitive damages issue, a "reasonable jury could find that [Plaintiff's] evidence to  
4 be clear and convincing proof of malice, fraud, or oppression." (*Hoch v. Allied-Signal, Inc.* (1998)  
5 24 Cal.App.4th 48, 60.) Plaintiff's expert opines that "[Defendant's] establishment of predetermined  
6 business and financial goals, which are given to the claims representatives results in a claims  
7 department structured and managed in such a way that results in the wrongful denial of claims as  
8 opposed to a fair, thorough, and objective investigation of the facts, as evidenced by the manner in  
9 which [Plaintiff's] claim was investigated." (Fuller Decl., p. 6.) Further, Plaintiff's evidence raises a  
10 triable issue of material fact as to whether the claims examiner who handled Plaintiff's claim did not  
11 fully investigate the claim in order to meet Defendant's denial target rates. (AMF 111-154.)  
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13 JUN 17 2014

14 Dated: \_\_\_\_\_

MARLA J. MILLER

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15 Judge of the Superior Court  
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